

Internal Revenue Service

memorandum

date: February 28, 2000

to: Internal Revenue Service, Examination Division
[REDACTED]

from: Alice M. Harbutte, Special Trial Attorney
Western Region, Denver, Colorado

subject: [REDACTED]
Statute Extensions, Forms 872
Forms 1120-ND, [REDACTED], [REDACTED] and [REDACTED] taxable years
[REDACTED]; [REDACTED], [REDACTED]

This memorandum is in response to your request that our office review the statute extensions, Forms 872, that have been secured from [REDACTED] with respect to three separate Forms 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons, filed for the taxable year [REDACTED] by [REDACTED], [REDACTED] and [REDACTED].

ISSUE

1. Whether three statute extensions, Forms 872, that were secured by the examination division for three separate Forms 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons, for the taxable years [REDACTED], [REDACTED] and [REDACTED] were properly executed by the taxpayer and constitute valid extensions.

CONCLUSION

1. The Forms 872 extending the statute for the [REDACTED], [REDACTED] and [REDACTED], Forms 1120-ND, are properly worded. We recommend, however, that you verify in writing with the [REDACTED], [REDACTED] and [REDACTED] trustee, that [REDACTED] has the authority to execute Forms 872 on behalf of these entities.

FACTS

A Form 1120-ND, Return For Nuclear Decommissioning Funds and Certain Related Persons, is a tax return that is required to be filed by qualified funds that are created by public utilities to pay the future costs of decommissioning nuclear power plants. The Form 1120-ND is used to report contributions received, income earned, payment of the administrative expenses of the fund, the tax on income earned, and information on whether any acts of self-dealing have occurred during the tax year. A Form 1120-ND must also be filed by trustees or disqualified persons who engage in acts of self-dealing with the fund. A Form 1120-ND must be filed within two and one-half months after the close of the taxpayer's tax year. A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a qualifying interest.

The following Forms 1120-ND are currently under audit:

<u>Tax Years</u>	<u>Taxpayer</u>	<u>EIN</u>
[REDACTED]	[REDACTED] Qualified Nuclear Decommissioning Trust for [REDACTED].	[REDACTED]
[REDACTED]	[REDACTED] Qualified Nuclear Decommissioning Trust for [REDACTED].	[REDACTED]
[REDACTED]	[REDACTED] Qualified Nuclear Decommissioning Trust for [REDACTED].	[REDACTED]

On [REDACTED], three separate Consents to Extend the Time to Assess Tax, Forms 872, were executed by [REDACTED]

[REDACTED], [REDACTED], [REDACTED], for each of the above-listed entities, [REDACTED] and [REDACTED]. A copy of the extension secured for [REDACTED] is attached as **Exhibit A**. You have represented that the consents for [REDACTED] and [REDACTED] are identical to the one secured for [REDACTED], except for the name and EIN number of the taxpayer. Your question is whether these three consents are valid.

DISCUSSION

I.R.C. § 6501 (a) sets out the general rule that taxes must be "assessed within 3 years after the return was filed * * *." However, the parties may consent to extend the statute of limitations pursuant to section 6501(c)(4). Absent a valid section 6501 (c)(4) agreement, the statute of limitations, is not extended and the audit must be completed within 3 years from the date the return was filed. A return filed before the due date is considered filed on the date it is due. Section 6501 (b)(1). A Form 872, Consent to Extend the Time to Assess Tax, is the form used by the Service to extend the period for assessment to the specific date specified on the form.

In order to be valid, the Form 872 must be properly executed by the taxpayer. When the taxpayer is an entity, the person signing the form must have the authority to sign on behalf of that entity. The extensions secured with respect to [REDACTED], [REDACTED] and [REDACTED], Forms 1120-ND are properly worded. We are not able to determine based upon the facts provided whether these forms were executed by a person with authority.

The information provided by you indicates that [REDACTED], [REDACTED], was delegated the authority to sign all federal and state income, excise, property and sales/use tax returns and statute extensions by [REDACTED], [REDACTED]'s parent company [REDACTED]. However, the returns in question are for decommissioning trusts. The fund is maintained by a trustee who also keeps the books and records for the fund. [REDACTED], [REDACTED] and [REDACTED] are separate entities from [REDACTED] and are not part of the consolidated tax return filed by [REDACTED]. Thus, the delegation provided by [REDACTED] does not apply to the Forms 1120-ND's in question.

As a result, we recommend that you verify, in writing, with the [REDACTED], [REDACTED] and [REDACTED] trustee, that [REDACTED] has authority to execute Forms 872 on behalf of these entities.

CONCLUSION

If you have any questions concerning this matter please call
Special Trial Attorney Alice M. Harbutte at [REDACTED].

A handwritten signature in cursive script, reading "Alice M. Harbutte". The signature is written in dark ink and is positioned above a horizontal line.

Alice M. Harbutte
Special Trial Attorney
Western Region
Denver, Colorado